



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 372

[EPA-HQ-TRI-2022-0453; FRL-9427-01-OCSPP]

RIN 2070-AL04

Implementing Statutory Addition of Certain Per- and Polyfluoroalkyl Substances (PFAS) to the Toxics Release Inventory Beginning with Reporting Years 2021 and 2022

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is updating the list of chemicals subject to toxic chemical release reporting under the Emergency Planning and Community Right-to-Know Act (EPCRA) and the Pollution Prevention Act (PPA). Specifically, this action updates the regulations to identify five per- and polyfluoroalkyl substances (PFAS) that must be reported pursuant to the National Defense Authorization Act for Fiscal Year 2020 (FY2020 NDAA) enacted on December 20, 2019. As this action is being taken to conform the regulations to a Congressional legislative mandate, notice and comment rulemaking is unnecessary.

DATES: This final rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–TRI–2022–0453, is available at <https://www.regulations.gov>. Please review the visitor instructions and additional information about the docket available at <https://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Daniel R. Ruedy, Data Gathering and Analysis Division (7406M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (202) 564-7974; email address: ruedy.daniel@epa.gov.

For general information contact: The Emergency Planning and Community Right-to-Know Act Hotline; telephone numbers: toll free at (800) 424-9346 (select menu option 3) or (703) 348-5070 in the Washington, DC, area and international; or go to <https://www.epa.gov/home/epa-hotlines>.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you manufacture, process, or otherwise use any of the PFAS listed in this rule. The following list of North American Industry Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this action applies to them. Potentially affected entities may include:

- Facilities included in the following NAICS manufacturing codes (corresponding to Standard Industrial Classification (SIC) codes 20 through 39): 311*, 312*, 313*, 314*, 315*, 316, 321, 322, 323*, 324, 325*, 326*, 327, 331, 332, 333, 334*, 335*, 336, 337*, 339*, 111998*, 211130*, 212324*, 212325*, 212393*, 212399*, 488390*, 511110, 511120, 511130, 511140*, 511191, 511199, 512230*, 512250*, 519130*, 541713*, 541715* or 811490*.

*Exceptions and/or limitations exist for these NAICS codes.

- Facilities included in the following NAICS codes (corresponding to SIC codes other than SIC codes 20 through 39): 211130 (corresponds to SIC code 1321, Natural Gas Liquids, and SIC 2819, Industrial Inorganic Chemicals, Not Elsewhere Classified); or 212111, 212112, 212113 (corresponds to SIC code 12, Coal Mining (except 1241)); or 212221, 212222, 212230, 212299 (corresponds to SIC code 10, Metal Mining (except 1011, 1081, and 1094)); or 221111, 221112, 221113, 221118, 221121, 221122, 221330 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce) (corresponds to SIC codes 4911, 4931, and 4939, Electric Utilities); or 424690, 425110, 425120 (limited to facilities

previously classified in SIC code 5169, Chemicals and Allied Products, Not Elsewhere Classified); or 424710 (corresponds to SIC code 5171, Petroleum Bulk Terminals and Plants); or 562112 (limited to facilities primarily engaged in solvent recovery services on a contract or fee basis (previously classified under SIC code 7389, Business Services, NEC); or 562211, 562212, 562213, 562219, 562920 (limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. 6921 *et seq.*) (corresponds to SIC code 4953, Refuse Systems).

- Federal facilities.

A more detailed description of the types of facilities covered by the NAICS codes subject to reporting under EPCRA section 313 can be found at: <https://www.epa.gov/toxics-release-inventory-tri-program/tri-covered-industry-sectors>. To determine whether your facility would be affected by this action, you should carefully examine the applicability criteria in 40 CFR part 372, subpart B. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What action is the Agency taking?

EPA is codifying the five additional PFAS that were added to the EPCRA section 313 list of reportable chemicals (more commonly known as the Toxics Release Inventory (TRI)) since the last conforming rule pursuant to the FY2020 NDAA (86 FR 29698, June 3, 2021) (FRL-10022-25)).

C. What is the Agency's authority for taking this action?

This action is issued under the authority of section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) (42 U.S.C. 11001 *et seq.*), section 6607 of the Pollution Prevention Act (PPA) (42 U.S.C. 13106), and section 7321 of the National Defense Authorization Act for Fiscal Year 2020 (FY2020 NDAA) (Pub. L. 116-92, <https://www.congress.gov/public-laws/116th-congress>).

II. Background

A. What is NDAA section 7321?

On December 20, 2019, the FY2020 NDAA was signed into law. Among other provisions, section 7321(c) identifies certain regulatory activities that automatically add PFAS or classes of PFAS to the EPCRA section 313 list of reportable chemicals. Specifically, PFAS or classes of PFAS are added to the EPCRA section 313 list of reportable chemicals beginning January 1 of the calendar year after any one of the following dates:

- Final Toxicity Value. The date on which the Administrator finalizes a toxicity value for the PFAS or class of PFAS;
- Significant New Use Rule. The date on which the Administrator makes a covered determination for the PFAS or class of PFAS;
- Addition to Existing Significant New Use Rule. The date on which the PFAS or class of PFAS is added to a list of substances covered by a covered determination;
- Addition as an Active Chemical Substance. The date on which the PFAS or class of PFAS to which a covered determination applies is:
 - (1) Added to the list published under section 8(b)(1) of the Toxic Substances Control Act (TSCA) (15 U.S.C. 2601 *et seq.*) and designated as an active chemical substance under TSCA section 8(b)(5)(A); or
 - (2) Designated as an active chemical substance under TSCA section 8(b)(5)(B) on the list published under TSCA section 8(b)(1).

The FY2020 NDAA defines “covered determination” as a determination made by rule under TSCA section 5(a)(2) that a use of a PFAS or class of PFAS is a significant new use (except such a determination made in connection with a determination described in TSCA sections 5(a)(3)(B) or 5(a)(3)(C)).

Under FY2020 NDAA section 7321(e), EPA must review confidential business information (CBI) claims before PFAS are added to the list pursuant to subsections (b)(1), (c)(1), or (d)(3) whose identities are subject to a claim of protection from disclosure under 5 U.S.C.

552(a), pursuant to subsection (b)(4) of that section. Under the FY2020 NDAA EPA must:

- Review a claim of protection from disclosure; and
- Require that person to reassert and substantiate or resubstantiate that claim in

accordance with TSCA section 14(f) (15 U.S.C. 2613(f)).

In addition, if EPA determines that the chemical identity of a PFAS or class of PFAS qualifies for protection from disclosure, EPA must include the PFAS or class of PFAS on the TRI in a manner that does not disclose the protected information.

B. What PFAS have been added to the TRI list?

EPA has reviewed the above-listed criteria and found five chemicals that meet the requirements of this part of the FY2020 NDAA and whose identity is not claimed as confidential business information (CBI).

Chemical Name/CAS No.	Triggering Action	Effective Date
Perfluorobutane sulfonic acid (375-73-5)	Final Toxicity Value (Ref. 1)	1/1/22
Perfluorobutanesulfonate (45187-15-3)	Final Toxicity Value (Ref. 1)	1/1/22
Potassium perfluorobutane sulfonate (29420-49-3)	Final Toxicity Value (Ref. 1)	1/1/22
2-Propenoic acid, 2-methyl-, 3,3,4,4,5,5,6,6,7,7,8,8,9,9,10,10,11,11,12,12,12-heneicosafuorododecyl ester, polymer with 3,3,4,4,5,5,6,6,7,7,8,8,9,9,10,10,10-heptadecafluorodecyl 2-methyl-2-propenoate, methyl 2-methyl-2-propenoate, 3,3,4,4,5,5,6,6,7,7,8,8,9,9,10,10,11,11,12,12,13,13,14,14,14-pentacosafuorotetradecyl 2-methyl-2-propenoate and 3,3,4,4,5,5,6,6,7,7,8,8,8-tridecafluorooctyl 2-methyl-2-propenoate (65104-45-2)	Subject to a covered TSCA section 5(a)(2) determination and has been designated as an active chemical substance under TSCA section 8(b)(5)(B) on the list published under TSCA section 8(b)(1)	1/1/21
2-Propenoic acid, 2-methyl-, hexadecyl ester, polymers with 2-hydroxyethyl methacrylate, gamma-omega-perfluoro-C10-6-alkyl acrylate and stearyl methacrylate (203743-03-7)	Addition to Existing Significant New Use Rule (see 85 FR 45109, July 27, 2020) (FRL-10010-44) CBI Declassification (Ref. 2)	1/1/22

As stated above, under FY2020 NDAA section 7321(e), EPA must review CBI claims before PFAS whose identities are subject to a claim of protection from disclosure under 5 U.S.C. 552(a) (pursuant to subsection (b)(4)) are added to the list. The substance with the CAS No. 203743-03-7 met the criteria under FY2020 NDAA section 7321(c)(1)(A)(iii), but was subject to a claim of protection from disclosure under 5 U.S.C. 552(b)(4) at that time. That substance's identity has since been published on the non-confidential portion of the TSCA Inventory in 2021; therefore, the chemical was added to the list.

As established by the FY2020 NDAA, the addition of these PFAS to the EPCRA section 313 list of reportable chemicals is effective January 1 of the calendar year following any of the dates identified in FY2020 NDAA section 7321(c)(1)(A). Accordingly, four of these five non-CBI PFAS are reportable for the 2022 reporting year (i.e., reports due July 1, 2023). One of the five is reportable for the 2021 reporting year (i.e., reports due July 1, 2022). A triggering activity under FY2020 NDAA section 7321(c)(1)(A)(iv)(II) (i.e., a PFAS to which a covered TSCA section 5(a)(2) determination is made and designated as an active chemical substance under TSCA section 8(b)(5)(B) on the list published under TSCA section 8(b)(1)) occurred for this PFAS in 2020, but it was not identified in the conforming rule in 2021 (see Implementing Statutory Addition of Certain Per- and Polyfluoroalkyl Substances (PFAS) to the TRI Beginning with the Reporting Year 2021 final rule (86 FR 29698, June 3, 2021) (FRL-10022-25)). Due to the 2020 triggering activity, this PFAS was added by the NDAA effective January 1, 2021. This rule is conforming the regulatory text in the CFR to reflect this addition.

EPA is issuing this final rule to amend the EPCRA section 313 list of reportable chemicals in 40 CFR 372.65 to include these five non-CBI PFAS added pursuant to the FY2020 NDAA.

III. Good Cause Exception

Section 553(b)(B) of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B),

provides that, when an agency for good cause finds that public notice and comment procedures are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. The EPA has determined that there is good cause for making this rule final without prior proposal and opportunity for comment because such notice and opportunity for comment is unnecessary. This action is being taken to comply with a mandate in an Act of Congress, where Congress identified actions that automatically add these chemicals to the TRI. Thus, EPA has no discretion as to the outcome of this rule, which merely aligns the regulations with the self-effectuating changes provided by the FY2020 NDAA.

IV. References

The following is a listing of the documents that are specifically referenced in this document. The docket includes these documents and other information considered by EPA, including documents that are referenced within the documents that are included in the docket, even if the referenced document is not itself physically located in the docket. For assistance in locating these other documents, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

1. EPA. Human Health Toxicity Values for Perfluorobutane Sulfonic Acid and Related Compound Potassium Perfluorobutane Sulfonate. U.S. Environmental Protection Agency, Washington, DC, EPA/600/R-20/345F: April 2021.

<https://cfpub.epa.gov/ncea/risk/recordisplay.cfm?deid=350888>.

2. EPA. Updates to Confidential Status of Chemicals on the TSCA Inventory. October 15, 2021. <https://www.epa.gov/tsca-cbi/updates-confidential-status-chemicals-tsca-inventory>.

V. Statutory and Executive Order Reviews

Additional information about these statutes and Executive orders can be found at *<https://www.epa.gov/laws-regulations/laws-and-executive-orders>*.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563:

Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review

B. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA, 44 U.S.C 3501 et. seq. Burden is defined in 5 CFR 1320.3(b). OMB has previously approved the information collection activities contained in the existing regulations and assigned OMB control numbers 2070-0212 and 2050-0078.

Currently, the facilities subject to the reporting requirements under EPCRA section 313 and PPA section 6607 may use either EPA Toxic Chemicals Release Inventory Form R (EPA Form 9350-1), or EPA Toxic Chemicals Release Inventory Form A (EPA Form 9350-2). The Form R must be completed if a facility manufactures, processes, or otherwise uses any listed chemical above threshold quantities and meets certain other criteria. For the Form A, EPA established an alternative threshold for facilities with low annual reportable amounts of a listed toxic chemical. The annual reportable amount is equal to the combined total quantities of the following waste management activities:

- Released at the facility (including disposed of within the facility);
- Treated at the facility (as represented by amounts destroyed or converted by treatment processes);
- Recovered at the facility as a result of recycling operations;
- Combusted for the purpose of energy recovery at the facility; and
- Amounts transferred from the facility to off-site locations for the purpose of recycling, energy recovery, treatment, and/or disposal.

A facility that meets the appropriate reporting thresholds, but estimates that the total annual reportable amount of the chemical does not exceed 500 pounds per year, can take advantage of an alternative manufacture, process, or otherwise use threshold of 1 million pounds

per year of the chemical, provided that certain conditions are met, and submit the Form A instead of the Form R. In addition, respondents may designate the specific chemical identity of a substance as a trade secret pursuant to EPCRA section 322 (42 U.S.C. 11042) and 40 CFR part 350. OMB has approved the reporting and recordkeeping requirements related to Forms A and R, supplier notification, and petitions under OMB Control No. 2070-0212 (EPA Information Collection Request (ICR) No. 2613.04) and those related to trade secret designations under OMB Control No. 2050-0078 (EPA ICR No. 1428.12).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers relevant to EPA's regulations in 40 CFR are listed in 40 CFR part 9 and displayed on the information collection instruments (e.g., forms, instructions).

C. Regulatory Flexibility Act (RFA)

This action is not subject to the RFA, 5 U.S.C. 601 *et seq.* The RFA applies only to rules subject to notice and comment rulemaking requirements under the APA, 5 U.S.C. 553, or any other statute. As discussed in Unit III., this rule is not subject to notice and comment requirements because the Agency has invoked the APA "good cause" exception under 5 U.S.C. 553(b).

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate of \$100 million or more as described in UMRA, 2 U.S.C. 1531-1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local, or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). It will not have substantial direct effects on the states, on the relationship between the National Government and the states, or on the distribution of power and

responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This rule will not impose substantial direct compliance costs on Indian Tribal Governments. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards. As such, NTTAA section 12(d), 15 U.S.C. 272 *note*, does not apply to this action.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations and Executive Order 14008: Tackling the Climate Crisis at Home and Abroad

The EPA believes that this action is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994) because it does not establish an environmental health or safety standard. This regulatory action makes changes to the reporting requirements for PFAS that will result in more information being collected and provided to the public; it does not have any impact on human

health or the environment. This action does not address any human health or environmental risks and does not affect the level of protection provided to human health or the environment. This action makes changes to the reporting requirements for PFAS which will provide information that government agencies and others can use to identify potential problems, set priorities, and help inform activities.

Likewise, Executive Order 14008 (86 FR 7619, January 27, 2021) directs Federal agencies, as part of a Government wide approach to reduce climate pollution impacts on minority populations and low-income populations. However, the EPA believes that this type of action does not directly concern human health or environmental conditions and therefore cannot be evaluated with respect to potentially disproportionate and adverse effects on people of color, low-income populations and/or indigenous peoples. This action involves additions to reporting requirements that will not affect the level of protection provided to human health or the environment. Although this action does not concern human health or environmental conditions, the information collected through TRI reporting will serve to inform communities living near facilities that report to TRI, and there is the potential for new information about toxic chemical releases and waste management practices occurring in those communities to become available through the TRI reporting data.

K. Congressional Review Act (CRA)

This action is subject to the CRA, 5 U.S.C. 801 *et seq.*, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 372

Environmental protection, community right-to-know, reporting and recordkeeping requirements, and toxic chemicals.

Dated: July 13, 2022.

Michal Freedhoff,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

Therefore, for the reasons stated in the preamble, EPA amends 40 CFR part 372 as follows:

PART 372—TOXIC CHEMICAL RELEASE REPORTING: COMMUNITY RIGHT-TO-KNOW

1. The authority citation for part 372 continues to read as follows:

Authority: 42 U.S.C. 11023 and 11048.

2. Amend § 372.65 as follows:

a. In paragraph (d), add in alphabetical order to the table the entries for “Perfluorobutane sulfonic acid”; “Perfluorobutanesulfonate”; “Potassium perfluorobutane”; “2-Propenoic acid, 2-methyl-, 3,3,4,4,5,5,6,6,7,7,8,8,9,9,10,10,11,11,12,12,12-heneicosafluorododecyl ester, polymer with 3,3,4,4,5,5,6,6,7,7,8,8,9,9,10,10,10-heptadecafluorodecyl 2-methyl-2-propenoate, methyl 2-methyl-2-propenoate, 3,3,4,4,5,5,6,6,7,7,8,8,9,9,10,10,11,11,12,12,13,13,14,14,14-pentacosafuorotetradecyl 2-methyl-2-propenoate and 3,3,4,4,5,5,6,6,7,7,8,8,8-tridecafluorooctyl 2-methyl-2-propenoate”, and “2-Propenoic acid, 2-methyl-, hexadecyl ester, polymers with 2-hydroxyethyl methacrylate, .gamma.-.omega.-perfluoro-C10-6-alkyl acrylate and stearyl methacrylate;” and

b. In paragraph (e), add in numerical order to the table the entries for “375-73-5”, “29420-49-3”, “45187-15-3”, “65104-45-2”, and “203743-03-7.”

The additions read as follows:

§ 372.65 Chemicals and chemical categories to which this part applies.

* * * *

(d) * * *

Table 4 to Paragraph (d)

Chemical name	CAS No.	Effective date
* * * *	* *	
Perfluorobutane sulfonic acid	375-73-5	1/1/22
Perfluorobutanesulfonate	45187-15-3	1/1/22
* * * *	* *	
Potassium perfluorobutane	29420-49-3	1/1/22

* * *		
2-Propenoic acid, 2-methyl-, 3,3,4,4,5,5,6,6,7,7,8,8,9,10,10,11,11,12,12,12- heneicosafuorododecyl ester, polymer with 3,3,4,4,5,5,6,6,7,7,8,8,9,9,10,10,10-heptadecafluorodecyl 2- methyl-2-propenoate, methyl 2-methyl-2-propenoate, 3,3,4,4,5,5,6,6,7,7,8,8,9,9,10,10,11,11,12,12,13,13,14,14,14 -pentacosafuorotetradecyl 2-methyl-2-propenoate and 3,3,4,4,5,5,6,6,7,7,8,8,8-tridecafluorooctyl 2-methyl-2- propenoate	65104-45-2	1/1/21
* * *		
2-Propenoic acid, 2-methyl-, hexadecyl ester, polymers with 2-hydroxyethyl methacrylate, .gamma.-.omega.-perfluoro- C10-6-alkyl acrylate and stearyl methacrylate	203743-03- 7	1/1/22
* * *		

(e) * * *

Table 5 to Paragraph (e)

CAS No.	Chemical name	Effective date
* * *		
375-73-5	Perfluorobutane sulfonic acid	1/1/22
* * *		
29420-49-3	Potassium perfluorobutane	1/1/22
* * *		
45187-15-3	Perfluorobutanesulfonate	1/1/22
* * *		
65104-45-2	2-Propenoic acid, 2-methyl-, 3,3,4,4,5,5,6,6,7,7,8,8,9,10,10,11,11,12,12,12- heneicosafuorododecyl ester, polymer with 3,3,4,4,5,5,6,6,7,7,8,8,9,9,10,10,10-heptadecafluorodecyl 2-methyl-2-propenoate, methyl 2-methyl-2-propenoate, 3,3,4,4,5,5,6,6,7,7,8,8,9,9,10,10,11,11,12,12,13,13,14,14, 14-pentacosafuorotetradecyl 2-methyl-2-propenoate and 3,3,4,4,5,5,6,6,7,7,8,8,8-tridecafluorooctyl 2-methyl-2- propenoate	1/1/21
* * *		
203743-03-7	2-Propenoic acid, 2-methyl-, hexadecyl ester, polymers with 2-hydroxyethyl methacrylate, .gamma.-.omega.- perfluoro-C10-6-alkyl acrylate and stearyl methacrylate	1/1/22
* * *		